

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Judge Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 CV 3875	DATE	June 5, 2012
CASE TITLE	INTERNATIONAL GOLDEN FOODS, INC. v. DVS AIR & SEA, INC.		

DOCKET ENTRY TEXT:

Plaintiff's motion for default judgment [121] is DENIED. Plaintiff is given 21 days from the entry of this order to file a responsive pleading.

STATEMENT

As described in previous orders, the present amended complaint in this case was filed considerably late. The case was nearly two years old when leave to amend was sought. Discovery had closed. Plaintiff was facing a response deadline on Defendant's motion for judgment on the pleadings on the very same day Plaintiff sought to amend the complaint. I nevertheless granted Plaintiff's motion to file the amended complaint, seeing clear delay but insufficient prejudice to Defendant to warrant denial of the amended pleading. I did, however, award Defendant attorney's fees for their wasted efforts in responding to previous motions. It must be noted that I was forced to take the rare and unfortunate step of issuing an order of body attachment on Plaintiff's previous counsel to vindicate Defendant's award of fees.

Incredibly, despite their own considerable tardiness in seeking to file the current complaint and despite their own counsel's inexcusable delay in paying Defendant their fees, Plaintiff now seeks a default judgment on it. Plaintiff does this citing to Rule 12(a)(4)(a), which generally requires a responsive pleading within 14 days of a court's denial of a motion to dismiss, absent a different timeline set by the court. While it is technically true that Defendant had not filed their responsive pleading within the required 14 days, under the circumstances it is entirely understandable that they had not done so. At the time of the filing of the default judgment motion, Plaintiff still had not been paid the fees it was due under my previous order. Defendant was needlessly distracted by their efforts to recover their fees. Moreover, Defendant was continuing to seek appropriate discovery to keep the case (the scope of which Plaintiff recently expanded) going forward.

From the court's perspective, Defendant has been diligent and prompt in every other one of its previous pleadings and appearances. I cannot say the same for Plaintiff. Under the circumstances, the request for a default judgment strains credibility. The motion is denied, and Plaintiff is given 21 days from the entry

STATEMENT

of this order to file a responsive pleading.